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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 JAN -8 PM 3:44

JEANNE HICKS, CLERK

BY: V. Adams

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DEMOCKER,

Defendant.

) No. P1300CR20081339

) Div. 6

) **DEFENDANT'S REPLY IN**
) **SUPPORT OF MOTION IN**
) **LIMINE TO PROHIBIT**
) **PROSECUTORIAL**
) **MISCONDUCT**

Without explaining why any set of circumstances would make factually unsupported assertions by a prosecutor unobjectionable, the State replies that the comments of the State cited in Mr. DeMocker's motion were not improper "given the circumstances under which they were made." (State's Response at 1). The State also fails to address the potential of cumulative misconduct infecting a trial where it repeatedly makes arguments and asks questions without any factual foundation. The Court should grant Mr. DeMocker's motion and put that State on notice that further unsupported allegations and questions will not be tolerated by the Court.

1 Such a ruling is necessary because the State has made clear that it does not
2 consider itself limited by the law's restriction that counsel's questioning and arguments
3 cannot make insinuations that are not supported by the evidence. *See State v. Cornell*,
4 179 Ariz. at 331, 878 P.2d at 1369; *State v. Williams*, 111 Ariz. 511, 515, 533 P.2d
5 1146, 1150 (1975). Instead, the State asserts that some undefined "circumstances"
6 make it acceptable for the prosecution to ignore this limitation and make baseless
7 arguments and insinuations, limited only by the prosecutor's imagination. In this case
8 thus far, this has included putting gloves on Mr. DeMocker, putting overalls on Mr.
9 DeMocker, having Ms. DeMocker carry a backpack, change his shoes, and burn things,
10 having Mr. DeMocker's shoes covered with blood, putting Ms. Kennedy's attacker in a
11 rage, creating a relationship between Ms. Kennedy and her attacker, describing what
12 Ms. Kennedy is saying to her attacker, describing the ego and sense of betrayal of the
13 attacker, the list goes on and on. The attorneys for the State have made multiple
14 arguments and asked questions of witnesses both in evidentiary hearings and in front of
15 two grand juries that are wholly unsupported by the evidence. The State does not
16 dispute this in its response. Rather it attempts to excuse it. The same is true with the
17 State's blatant attempts to appeal to fear by repeatedly referring to O.J. Simpson.

18 The Court should put the State on notice that it will be required to abide by the
19 law's limitations on its questioning and arguments and that no circumstances excuse
20 ignoring these limits. Ignoring these limits denies Mr. DeMocker's rights under the
21 Due Process Clause and Eighth Amendment of the United States Constitution and the
22 Arizona Constitution counterparts. An elevated level of due process applies both to the
23 guilt and penalty phases of a capital case. *Beck v. Alabama*, 447 U.S. 625, 638 (1980).
24 As the *Berger* court, which is cited by the State in its response, concluded of the
25 prosecutor's duty "[i]t is as much his duty to refrain from improper methods calculated
26 to produce a wrongful conviction as it is to use every legitimate means to bring about a
27
28

1 just one.” *Berger v. United States*, 295 U.S. 78, 88, 55 S Ct. 629, 633 (1935). This
2 Court should grant Mr. DeMocker’s motion *in limine* to prohibit prosecutorial
3 misconduct.
4

5 DATED this 8th day of January, 2010.

6 By: 

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16 **ORIGINAL** of the foregoing filed
17 this 8th day of January, 2010, with:

18 Jeanne Hicks
19 Clerk of the Court
20 Yavapai County Superior Court
21 120 S. Cortez
22 Prescott, AZ 86303

23 **COPIES** of the foregoing hand delivered
24 this 8th day of January, 2010, to:

25 The Hon. Thomas B. Lindberg
26 Judge of the Superior Court
27 Division Six
28 120 S. Cortez
Prescott, AZ 86303

Joseph C. Butner, Esq.
Prescott courthouse basket

